

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEMO ENDORSED

KEVIN STERLING,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil Case No. 20-Cv-10754

Crim. Case No. 16-Cr-00488

United States District Judge

Honorable Lewis A. Kaplan

Mailed by First Class mail
to Kevin Sterling, Reg.
No. 55933-054, FCI Ray
Brook, Federal
Correctional Institution,
P.O. Box 900, Ray Brook,
NY 12977
AM

MOTION REQUESTING COURT SET TIME
FOR PETITIONER TO REPLY UNDER §2255 RULES

Comes Now, Kevin Sterling, the undersigned Pro se Petitioner (hereafter, "Movant"), and files this motion respectfully requesting that this Honorable Court set a time for him to file his reply to the Government's Memorandum of Law in Opposition to his §2255 motion. In support of this Court setting the time for movant to reply, he states as follows based in law and fact.

According to the habeas rules, a federal prisoner "may file a reply to the respondent's answer" to his §2255 motion. See §2255 Rule 5(d)(emphasis mine).¹ This rule requires the "judge to set the time to file" the reply when the local rules of the district

¹ See §2255 Rule 5(d)—Advisory Committee Notes of 2019, which recognizes that "[t]he petitioner has a right to file a reply... [because] the first sentence of subsection (d) makes it even clearer that the moving party has a right to file a reply to respondent's answer or pleadings. ...[the rule] retains the word 'may' which is used throughout the federal rules to mean 'is permitted to' or 'has a right to.'" Thus, granting movant an opportunity to reply as mandatory to protect his fundamental rights of due process. Mathews v. Eldridge, 424 U.S. 319, 333 (1976)(Requirements of due process is being held in meaningful time and manner).

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SO ORDERED

LEWIS A. KAPLAN, USDJ

*Granted to let get that any
reply shall be filed as later
than July 8, 2021*
[Signature]
4/9/21